



[2017] JMSC Civ. 98

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2013 HCV03868

BETWEEN	MARLON WILLIAMS	CLAIMANT
AND	SHELDON JAMES	1st DEFENDANT
AND	THE ATTORNEY GENERAL OF JAMAICA	2nd DEFENDANT

Angela Powell-Hylton instructed by Campbell McDearmot for the Claimant.

Shanice Hunter instructed by Director of State Proceedings for the Defendant.

HEARD: 16th & 30th June, 2017

Motor Vehicle – Personal Injury – Laceration – Tenderness to Chest – Quantum – Whether Special Damages Should Be Awarded Where No Proof Given

CORAM: BROWN, Y. J., (Ag.)

Assessment of Damages

[1] The Claimant asserts that on the 2nd December 2008, while driving a motor vehicle licensed PC8291 along the Luana Main Road in the parish of St. Elizabeth, the 1st Defendant, Sheldon James, who was driving a police vehicle licensed 203580 suddenly drove into his pathway thereby causing him (the Claimant) to suffer personal injury, loss and damage and incur expense.

[2] An acknowledgment of Service was filed by the 2nd Defendant, on the 25th of July 2013 and an Interlocutory Judgment in Default of Defence was entered against the 2nd Defendant on February 25, 2014. Thereafter, on July 18, 2014 a Defence Limited to Quantum was filed by the 2nd Defendant.

[3] On the 12th June 2017, the Court was tasked with assessing the damages for injuries to the Claimant Mr. Marlon Williams.

The Claimant's Injuries

[4] A medical report indicates that upon arrival at the Black River Hospital (St. Elizabeth), the Claimant was first examined by Dr. Foo who stated his findings as follows:

- 10 cm. interrupted subcutaneous and muscle deep laceration to lateral right arm
- Tenderness to anterior chest.

[5] According to this medical report, the Claimant was admitted for observation and X-ray of the skull, chest and lateral sternum was normal. He complained of worsening pain and swelling to his left knee. However, the doctor reported that the left knee "appeared essentially normal but there was a questionable radiolucent area to the anterior aspect of same."

Further, the medical report stated that the Claimant had returned to the hospital for a review due to continued pain in his left knee. He was referred to the Orthopaedic Department of Mandeville Regional Hospital for an expert opinion.

General Damages

[6] As regards general damages, the Claimant's Counsel Mrs. Angele Powell-Hylton offered four cases for consideration. They were **Irene Byfield v Ralph Anderson & Ors; Marcia Leslie v Danesh Chandra Panoe & Ors.; Garfield Scott v Donovan Cheddisingh & Phillip Campbell; & Dalton Barrett v Poncianna Brown & Leroy Bartley.**

[7] In **Irene Byfield v Ralph Anderson & Ors.**, found in Volume 5 of Khan's Report, the Claimant sustained injuries to the chest, back and neck; trauma to back resulting in lumbar strain; severe back pains; abrasions to lower leg and

stomach; and headaches. The doctor opined that the injury was having severe effects on the Claimant's ability to care for herself. On September 18, 1997 she was awarded general damages in the sum of \$300,000 which updates to \$1,590,843.61.

- [8] Marcia Leslie's case is at page 150 of Khan's Report, Volume 5. Here, the Claimant suffered loss of consciousness for a few minutes; bruises to left knee, and severe backache. In a nutshell, the doctor stated that she suffered a severe whiplash injury to the spine and would continue to suffer intermittent back pains for several years. In addition, she would be unable to undertake strenuous activity. In July 1997, this Claimant received \$400,000 for general damages which now amounts to \$2,180,410.02.
- [9] The case of **Garfield Scott v Donovan Cheddisingh & Phillip Campbell** is reported in Khan's Volume 4. The Medical Report in this matter stated injuries as excruciating pains; headaches; contusions on right shoulder and hip; puncture wound on left forearm; and swollen painful and tender knee. Additionally, the medical report mentioned that the Claimant had been left with a painful lower right hip when lifting heavy objects and he experienced difficulty playing soccer and cricket. He was awarded \$300,000 for general damages in July 1997 which updates to \$1,635,307.00.
- [10] And lastly, in **Dalton Barrett v Poncianna Brown & Leroy Bartley**, (Khan's Report, Volume 6), the Claimant suffered tenderness around right eye and face; tenderness in the lumbar spine; tenderness in left hand. He was later diagnosed with mechanic lower back pains and mild cervical strain. Physical therapy was recommended and that proved effective. However, the doctor cautioned that the Claimant would quite likely experience lumbar pain should he resume prolonged driving. In November, 2006, the award for general damages was \$750,000 and this updates to \$1,801,596.06.

- [11] In concluding her submission, Mrs. Powell-Hylton posited that the injuries of the Claimants in the four cases aforementioned, were similar to that of the Claimant in the matter at bar, and as such, he should be awarded the sum of \$2,000,000 for general damages.
- [12] On the converse, Miss Shanice Hunter, the defendant's counsel submitted that the cases relied on by the opposing attorney were not closely aligned with the case at bar. Instead, she offered for consideration, the case of **Hermina Harvey v Amy Rigabie, CLH049 of 2001**.
- [13] It is reported that on April 7, 2000, Hermina Harvey was using the cross-walk in Homestead, St. Catherine to cross and while doing so, she was struck by a car driven by Amy Rigabie. This defendant was said to be speeding and Miss Harvey sustained injuries which were described as:
- Pain and tenderness to the right side of the body
 - Tenderness to the right shoulder
 - Diffuse swelling and tenderness with superficial abrasion to the posterior aspect of the right forearm
 - Mild swelling and tenderness to the right knee.

An award of \$240,000 was made for general damages which updates to \$777,188.32.

- [14] However, in her quest to strengthen the position that the injuries sustained by the Claimants in the cases cited were similar to those of Mr. Williams, Counsel Mrs. Powell-Hylton stated that his chest continues to feel the effect of injuries "with pain ranging from minimal to severe." She noted, "as a result of his injuries he finds it difficult to stand for more than few minutes and can no longer operate as driving without feeling pain."

- [15] Notwithstanding that revelation, no medical report was forthcoming to highlight those difficulties. In fact, although the Claimant received a referral to the Orthopaedic Department of Mandeville Regional Hospital, there is nothing to indicate that he went.
- [16] After reviewing all the cases submitted for consideration, I will venture to say that those relied on by the Claimant's attorney were not particularly helpful. The injuries sustained by the Claimants in those cases appeared to be significantly more serious than Mr. Williams'. I find though, that the case of ***Hermina Harvey v Amy Regabie*** offered more guidance in determining the award for general damages in respect of the Claimant in the case bar.
- [17] Another case *Johnson v ER Farms & Co., Ltd.*, JM 2016 SC64, I believe provided some direction. The Claimant here was injured on the job and sustained mild painful distress, moderate swelling and tenderness and a 3cm laceration to the foot. In 2016, an award of \$700,000 was made for general damages and using the April 2017 CPI, this updates to \$725,151.52.
- [18] It must be noted that the Claimant in *Johnson v ER Farms* was not hospitalized and her injuries were less serious than Mr. Williams' in the case at bar. But in comparison with *Hermina Harvey (Hermina Harvey v Amy Rigabie)* the injuries sustained by the Claimant in the instant case were fewer and seemingly not as severe. For instance, the consultant orthopaedic surgeon whom Harvey visited three years after the accident, posited that while it was unlikely that her shoulder and knee injuries were going to be permanent, there was some possibility that there would be some sort of impairment. Hence physiotherapy was recommended. No such prognosis was noted in the medical report pertaining to Mr. Marlon Williams.
- [19] It is in light of the two cases, Harvey and Johnson, which offered a more appropriate guide, the sum of \$750,000 is deemed a reasonable award for general damages in respect of Mr. Marlon Williams.

Special Damages

Loss of Earnings

[20] The Claimant's evidence regarding special damages commanded intense scrutiny. In relation to loss of earnings, he pleaded in his particulars of claim, 12 weeks at \$10,000 per week; yet in his evidence he pointed to 216 days at \$7000 per week. Apart from mentioning his employer by name and stating how he calculated his loss of earnings, Mr. Williams had failed to substantiate the sum of \$1,512,000 which he claims for nine months. A statement from his employer would have been of assistance in establishing his earnings and loss thereof and a medical report could have offered some idea as to the period of his incapacitation.

[21] With this paucity of evidence, how then must I determine the Claimant's loss of earnings? I am guided by the principle that special damages must be strictly proven. However, it is also reasonable that Mr. Williams would have been out of work for some time considering the injuries sustained. I am therefore minded to award \$120,000 for loss of earnings the sum, which the Claimant had pleaded initially in his Particulars of Claim.

Cost of Household Help

[22] In relation to household chores, the Claimant said he was unable to perform those duties and sought the assistance of his sister. While he noted that he was on crutch for "a month odd" he failed to indicate the duration of his sister's assistance. He however stated that he gave her \$4100 per week for this help which she provided, yet no proof was forthcoming to support his stance that his sister's assistance attracted payment. Again a statement from his sister would have sufficed especially in light of his evidence that she resigned her job as a housekeeper at Invical Hotel, in order to assist him. I note too that in his particulars of claim he stated that he paid his sister the sum of \$4000 per week

for 8 weeks, but in evidence he added a \$100 more per week and the time frame was not mentioned. In light of the foregoing, I find that Mr. Williams has not satisfactorily proven this item of special damages.

[23] As regards the transportation cost, the Claimant contended that he spent \$3500 per trip from his home at New Holland, St. Elizabeth to the Black River Hospital and back.

[24] In his evidence Mr .Williams said he went to the hospital on four occasions after being discharged in order for x-rays and physiotherapy. However, he furnished no medical report in relation to those activities and the one medical report that was tendered and admitted into evidence mentioned one visit on December 18, 2008 for a scheduled review. Furthermore in cross-examination he also admitted that there were no more medical reports.

[25] Stating a sum of \$53,000 for transportation Mr. Williams said while he was hospitalized, “food and supplies” were taken daily to him by a taxi operator whom he paid. But again no proof was forthcoming. I will therefore make an award of \$7000 for the trip to and from the hospital on the 18th December 2008.

[26] Hence special damages is awarded as follows:

Loss of income	\$120,000
Transportation	\$7000
Medical Report	<u>\$1000</u>
Total	\$128,000.00

In light of the foregoing, judgment is awarded as follows:

1. General Damages in the sum of \$750,000 with an interest of 3% from the date of the service of the Claim Form to the date of the judgment.

2. Special Damages in the sum of \$128,000 with an interest of 3% from the date of the accident to the date of the judgment.
3. Cost to the Claimant to be agreed or taxed.